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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. ~~1606~~ 70-128

MARTIN DIES, JR., ET AL., *Appellants*

v.

VAN PHILLIP CARTER, ET AL., *Appellees*

On Appeal from the United States District Court for the Northern District of Texas, Dallas Division

Appellees' Brief

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v.

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On Appeal from the United States District Court for the Northern District of Texas, Dallas Division

Appellees' Brief

OPINIONS BELOW

The opinions of the Three Judge Court are reported at 321 F. Supp. 1358, under the style of *Carter v. Dies.*

The Three Judge Court ruled that a filing fee violates the First Amendment and the due process and equal protection clauses of the Fourteenth Amendment when it is used as a revenue collecting device or when made an absolute qualification in order for a candidate to get his name on the ballot.

JURISDICTION

The appellate jurisdiction of the Supreme Court has been properly invoked, and probable jurisdiction was noted on June 7, 1971.

QUESTIONS PRESENTED

There are two questions presented by the appeal:

1. Whether or not a filing fee can be used as a revenue collecting device to finance party primaries.

2. Whether or not a filing fee can be used as a regulatory device to restrict access to the ballot to "serious" candidates.

STATUTES INVOLVED

Articles 13.07a, 13.08, 13.08a, 13.15 and 13.16 of the *Texas Election Code* were declared unconstitutional by the Three Judge Court.

A concise summary of the many Texas filing fee statutes is filed herewith, as Exhibit "A", to illustrate what a broad net is cast over the associational activities of candidates and voters alike by these filing fees.

STATEMENT

On December 15, 1969, Theodore H. Wischkaemper, a candidate for County Judge, filed suit in Fort Worth, Texas, challenging the validity of the $50 deposit and a party assessment of $6,300, computed at 32% of the annual salary of the office.

On January 14, 1970, William Pate, a candidate for County Commissioner, filed suit in El Paso, Texas, attacking the $50 deposit and a party assessment of $1,424.60, computed at 17% of the annual salary of the office.

On February 6, 1970, Van Phillip Carter, a candi-

date for Commissioner of Public Lands, filed suit in Dallas, Texas, attacking the $1,000 statutory filing fee for statewide office.

On March 16, 1970, a joint motion for consolidation of the three separate lawsuits was filed; and on March 25, 1970, a three-judge panel was named to hear the consolidated lawsuit.

On April 3, 1970, the three-judge court, after a preliminary hearing, ordered the names of Theodore Wischkaemper and William Pate on the ballot without filing fees, but relief was denied to Van Phillip Carter for reasons unrelated to filing fees.

On October 9, 1970, the three-judge court heard the consolidated lawsuit on the merits and on December 21, 1970, entered the opinions which are the subject of this appeal.

Two Exhibits and five Tables, containing supplementary information which may prove helpful to an understanding of the Texas filing fee, are filed herewith, at page 36 through page 46. The titles of these Exhibits and Tables are listed in the Supplementary Material Index, page ii.

SUMMARY OF ARGUMENT

The fourfold argument against filing fees and party assessments which comprises the main body of this Brief may be summarized as follows:

1. The filing fee statutes are invalid because they authorize the political party to make party assessments without notice, hearing or appeal and without limitation.

2. The filing fee statutes are invalid because they subject First Amendment rights to the prior restraint of a license without narrow, objective, and definite standards.

3. The filing fee cannot be justified as a regulatory measure because the *Texas Election Code* does not expressly say that the tax may be used for any purpose other than revenue, and it is well settled that a State may not charge for the enjoyment of a right granted by the Federal Constitution.

4. The filing fee works an invidious discrimination because exercise of the fundamental right to seek elective office is conditioned upon economic status, and payment of the tax has no relation to the constitutional qualifications for office.

ARGUMENT

I.

The Filing Fee is Unbridled Confiscation

The San Antonio Court of Civil Appeals, in construing the Texas filing fee statutes in 1926, concluded that they gave the county executive committee of the political party "unbridled license to confiscate the property of candidates."

Chief Justice Fly, speaking for the court, in the case of *Holzschuher v. Wurzbach*, 286 S.W. 289, went on to say: "The extraordinary, almost arbitrary power placed in the hands of county executive committees to levy tribute on every candidate . . . could be exercised in such a way as to take in advance every dollar that would be realized from the salary pertaining to the office. That is clearly exemplified in this case where a county executive committee has required of a citizen desiring to seek the nomination of his party for a seat in the house of representatives of Congress, the payment of three-fourths of the salary attached to the office for one year. This for Bexar County alone, and there are ten other counties in the district with the same authority as the executive committee in Bexar County, which if exercised in the same extravagant way as has been attempted by Bexar County, would seize every dollar of salary attached to the term of two years."

It would be difficult to imagine any greater act of invidious discrimination than the "unbridled confiscation" attempted in the *Holzschuher* case.

As Mr. Justice Matthews said, in *Yick Wo v. Hopkins*, 118 U.S. 356: "Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution."

Incredibly enough, the Texas Legislature, even after *Holzschuher*, has done little to keep the power of the political party to levy tribute on candidates within reasonable bounds. The party assessments in the 1970 Democratic Primary Election in Tarrant County, Texas, were made on the basis of 32% of the annual salary of the office, with some assessments reaching the astronomical figure of $8,900.00! See Table I, page 42, for a complete schedule of these invidious assessments, which reasonable minds might designate "unbridled confiscation."

While general grants of power to administrative agencies are permissible to regulate some activities, other types of activities, such as personal liberties, can be regulated only pursuant to the lawmaking functions of a legislature. If that power is delegated, then there must be acceptable standards included within that delegation so that the agency can follow the policy of the statute. See *Zemel v. Rusk*, 381 U.S. 1; *Kent v. Dulles*, 357 U.S. 116.

In other words, the legislature must determine the policy of the law, and this function cannot be delegated. *Panama Refining Co. v. Ryan*, 393 U.S. 388.

The legislature can, however, authorize administrative officials to prescribe rules and regulations to implement the legislative enactments. This delegation should be specific to prevent intervention into protected activities of individuals. See *Cantwell v. Connecticut*, 310 U.S. 296.

For a law subjecting First Amendment rights to the prior restraint of a license, without narrow, objective, and definite standards is unconstitutional. *Shuttlesworth v. Birmingham*, 394 U.S. 147.

Article 13.08, *Texas Election Code*, authorizing party assessments, is unconstitutional on its face, because there is no statutory provision for notice, hearing, or appeal, an invidious *in camera* procedure similar to the one condemned by *Briscoe v. Kusper*, 7 Cir., 435 F. 2d 1046, 39 L. W. 2386. See also, *Staub v. Baxley*, 355 U.S. 313; and *Bell v. Burson*, 29 L. Ed. 2d 90.

Article 13.08a, *Texas Election Code*, provides for a ceiling on party assessments of 10% of the aggregate annual salary for two-year offices (there is only one, U. S. Representative) and 15% of the aggregate annual salary for four-year offices, for counties with a population in excess of one million; but only two counties in the State fall within the ambit of this limitation, and the political parties in the other 252 counties apparently still have "unbridled license" to "levy tribute" on candidates for public office, without statutory limitation.

It has been held that absolute discretion, like cor-

ruption, marks the beginning of the end of liberty. *New York v. United States*, 342 U.S. 882, 884.

And it is wise to remember that the taxing and licensing power is a dangerous and potent weapon which, in the hands of unscrupulous men, could be used to suppress freedoms and destroy religion unless it is kept within appropriate bounds. *Follett v. McCormick*, 321 U.S. 573, 579.

II.

The Filing Fee Is a Prior Restraint on Expression

The right to vote is a fundamental right that preserves all other rights, deserving of the most careful protection, and to be limited only for compelling state interests. *Kramer v. Union Free School Dist.*, 395 U.S. 621, 23 L. Ed. 2d 583; *Williams v. Rhodes*, 393 U.S. 23, 30-31; *Harper v. Virginia Board of Elections*, 383 U.S. 663; *Carrington v. Rash*, 380 U.S. 39; *Reynolds v. Sims*, 377 U.S. 533; *Wesberry v. Sanders*, 376 U.S. 1.

The right to seek office, as well as the right to vote, is a fundamental constitutional right. *Jenness v. Little*, 306 F. Supp. 925, appeal dismissed, 90 S. Ct. 820; *Thomas v. Mims*, 317 F. Supp. 179, 39 L. W. 2165; and *Stapleton v. Clerk*, 311 F. Supp. 1187.

Where voting rights are involved any restrictions must be carefully scrutinized. *Reynolds v. Sims, supra*, 377 U.S. 533, 553; *Wesberry v. Sanders, supra*, 376 U.S. 1; *Harper v. Virginia Board of Elections, supra*, 383 U.S. 663.

The statutory requirement of the payment of a filing fee by a candidate as a precondition to access to the ballot is, in effect, a prior restraint on the First Amendment rights of expression—speech, publication and assembly—for, it is a matter of common knowledge that candidates like to orate, distribute handbills and hold political rallies.

And, as Chief Justice Burger recently said, in *Organization For a Better Austin v. Keefe*, 29 L. Ed. 2d 1, 5: "Any prior restraint on expression comes to this court with a 'heavy presumption' against its validity." See also, *Carroll v. Princess Anne*, 393 U.S. 175, 181; and *Bantam Books, Inc., v. Sullivan*, 372 U.S. 58, 70; *New York Times v. United States*, 39 L. W. 4879.

This restriction threatens the cherished freedom of association protected by the First Amendment, made applicable to the States through the Fourteenth Amendment, *Elfbrandt v. Russell*, 384 U.S. 11, 18; *Baggett v. Bullitt*, 377 U.S. 360; *N.A.A.C.P. v. Alabama*, 357 U.S. 449, 460; *Gibson v. Florida Legislative Committee*, 372 U.S. 539, 543-546.

No one may be required to obtain a license in order to speak. *Thomas v. Collins*, 323 U.S. 516, 543-544. Nor may a license be required as a precondition for the peaceable distribution of books, pamphlets, and handbills. *Schneider v. United States*, 308 U.S. 147. This court has often recognized that the activity of peaceful pamphleteering is a form of communication protected by the First Amendment. *Organization for a Better Austin v. Keefe, supra*, 29 L. Ed. 2d 1;

Martin v. City of Struthers, 319 U.S. 141; *Lovell v. Griffin*, 303 U.S. 444.

A permit may not be required as a precondition for an assembly in the streets, parks, or public buildings. *Hague v. C.I.O.*, 307 U.S. 496.

The right of free association is closely allied to freedom of speech, and, like free speech, lies at the foundation of a free society. *Shelton v. Tucker*, 364 U.S. 479.

The First Amendment guarantees to the people as sovereign, as the retained attribute of their ultimate sovereignty, their right, in open and wide-ranging debate, publication, and assembly to review the government they have created, the adequacy of its functioning, and the presence or absence of a need to alter and replace it. *Mandell v. Mitchell*, 325 F. Supp. 797.

Maintenance of the opportunity for free political discussion is a basic tenet of our constitutional democracy. *Stromberg v. California*, 283 U.S. 359, 369; and *Cox v. Louisiana*, 379 U.S. 536.

First Amendment rights of expression are fundamental to the preservation of an open, democratic society, since restriction on their exercise inhibits the debate by which society's values are set and its laws reformed to reflect prevailing opinions. *Hanover v. Northrup*, DC Conn., 325 F. Supp. 170.

Before a state can in any way regulate the First Amendment right to freedom of association, which is a concomitant of the fundamental right to vote, it must be shown that compelling state interest justifies

such regulation, and such regulation must be narrowly and fairly drawn. *Jackson v. Ogilvie, Gov. of Ill.*, DC Ill., 325 F. Supp. 864.

Recent federal cases have upheld the following campaign type activities as protected by the First Amendment: criticism of public officials and comment on matters of public interest;[1] canvassing, poster hanging and poll watching;[2] speechmaking, leafletting and distribution of underground newspaper;[3] political advertising;[4] sample ballots;[5] associational activities, petitions and litigation;[6] theatrical performances;[7] parades;[8] and even nonverbal expression,[9] armbands,[10] and silence.[11]

On the other hand, a candidate for Congress was recently allowed to enjoin county commissioners from giving their employees election day off to campaign for his opponent.[12] And an injunction was also recently granted to prevent a "substantial, perhaps massive, political effort in favor of the ins and against the outs" in Cook County, Illinois.[13]

While it is often said that First Amendment rights are not absolute, and that conduct incidental to the

[1] *Flynn v. Giarusso*, 321 F. Supp. 1295.
[2] *Shakman v. Demo. Organ. of Cook County*, DC Ill., 310 F. Supp. 1398.
[3] *Gall v. Lawler*, 322 F. Supp. 1223.
[4] *Radical Lawyers Caucus v. Pool*, 324 F. Supp. 268.
[5] *Gilmore v. Greene Co. Demo. Party Ex. Comm.*, 435 F. 2d 487.
[6] *McQueen v. Druker*, 1 Cir., 438 F. 2d 781.
[7] *Larue v. California*, 326 F. Supp. 348.
[8] *Abernathy v. Conroy*, 4 Cir., 429 F. 2d 1170.
[9] *Sutherland v. DeWulf*, 323 F. Supp. 740.
[10] *Hill v. Lewis*, 323 F. Supp. 55.
[11] *Hanover v. Northrup, supra*, DC Conn., 325 F. Supp. 170.
[12] *White v. Snear*, 313 F. Supp. 1100.
[13] *Shakman v. Cook Co. Demo. Organ., supra*, 7 Cir., 39 L. W. 2263.

exercise of speech in public places is subject to reasonable nondiscriminatory regulation governing time, manner, and place, *Cantwell v. Connecticut, supra*, 310 U.S. 296, once it is determined that state action impinges on First Amendment rights, which determination has already been made in this case by a three-judge court, then the burden of proof is on the state to show that the governmental interests asserted to support the impingement are "compelling." *N.A.A.C.P. v. Alabama, supra*, 357 U.S. 449; *Sweezy v. New Hampshire*, 354 U.S. 234 (Frankfurter, concurring).

Absent such showing, any "time," "manner," or "place" regulation is unreasonable. For a statute touching these protected rights must be "narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the State." *Cantwell v. Connecticut, supra*, 310 U.S. 296, 311.

Legitimate legislative goals "cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved." *Shelton v. Tucker, supra*, 364 U.S. 479, 488. And see *Louisiana v. N.A.A.C.P.*, 366 U.S. 293, 296-297; *N.A.A.C.P. v. Button*, 371 U.S. 415, 432-433; *Elfbrandt v. Russell, supra*, 384 U.S. 11, 18.

This "less restrictive means" principle is especially applicable to regulations that impinge on First Amendment speech and associational rights, even when accompanied by conduct. *Talley v. California*, 362 U.S. 60; *Schneider v. United States, supra*, 308 U.S. 147; see *Hiett v. U. S., 5 Cir.*, 415 F. 2d 664,

cert. denied, 397 U.S. 936.

Thus, while the Texas Legislature can certainly provide "orderly honest elections . . . [by] measures reasonably calculated to that end," *Johnson v. Hood*, 430 F. 2d 610, such as "regulations . . . necessary to detect and punish fraud," per Article VI, Section 4, of the State Constitution (*Jurisdictional Statement*, pp. 11-12), or "prohibiting under adequate penalties all undue influence . . . from power, bribery, tumult or other improper practice," per Article XVI, Section 2, (*Appellants' Brief*, p. 3), this must be done in a manner that strikes at the very fraud or undue influence to be detected and punished.

Surprisingly enough, the State of Texas would have us believe that a head tax on political candidates is authorized by a constitutional mandate to provide criminal sanctions, i.e., punishments and penalties, to guarantee orderly honest elections, which is an indirect way of saying that only the affluent are honest and law abiding, and all others should be excluded from the ballot.

In broadly limiting the speech and associational rights of candidates and voters alike, through the imposition of arbitrary, excessive and oppressive filing fees, the Texas Legislature has simply failed to speak with "that small calibre precision required of regulations touching First Amendment rights." *New Left Educational Project v. Board of Regents of University of Texas*, 326 F. Supp. 158.

The State of Texas cannot justify the deposit and party assessment on the theory that they are "neces-

sary" for revenue and regulation purposes, for both of these ends can be "more narrowly achieved" without "broadly stifling" fundamental personal liberties.

III.

There Is No Justification for the Filing Fee

In the *Jurisdictional Statement*, filed in April, the State of Texas attempted, at pages 11 and 12, to justify the filing fee as a regulation authorized by Article VI, Section 4, of the Texas Constitution, "to detect and punish fraud and preserve the purity of the ballot box."

However, the Wischkaemper-Jenkins *Motion To Dismiss or Affirm*, filed in May, cited at pages 11 and 12, three recent three-judge Texas cases rejecting this provision as justifying voter restrictions: *United States v. Texas*, 252 F. Supp. 234, 384 U. S. 155, invalidating the poll tax; *Beare v. Smith*, 39 L. W. 2388, striking down annual voter registration; and *Garza v. Smith*, 320 F. Supp. 131, outlawing statutory prohibition against assisting voters with bodily infirmities.

The State of Texas has now abandoned the fraud theory of justification for the filing fee, as expressed in Article VI, Section 4, of the State Constitution (*Jurisdictional Statement*, pages 11 and 12) in favor of the undue influence theory set forth in Article XVI, Section 2, of the State Constitution (*Appellants' Brief*, page 3) which reads in its entirety as follows:

> Laws shall be made to exclude from office,

> serving on juries, and from the right of suffrage, those who may have been or shall hereafter be convicted of bribery, perjury, forgery, or other high crimes. The privilege of free suffrage shall be protected by laws regulating elections and prohibiting under adequate penalties all undue influence therein from power, bribery, tumult or other improper practice.

The State of Texas cannot seriously contend that the use of filing fees, to "exclude from office" those whose only crime is being poor, can prevent "perjury, forgery or other high crimes."

And not one scintilla of evidence is in the record to demonstrate that the use of filing fees prevents "undue influence . . . from power, bribery, tumult, or other improper influence."

"Speculative apprehension," *U. S. Servicemen's Fund v. Shands*, 4 Cir., 440 F. 2d 44, and "undifferentiated fear," *Bottle v. Mulholland*, 5 Cir., 439 F. 2d 321, are not enough to overcome First Amendment rights.

As the Court said in *Eisner v. Stamford Board of Education*, 2 Cir., 440 F. 2d 303, ". . . authorities must demonstrate reasonable basis for interference with . . . speech, and courts will not rest content with bare allegations that basis existed."

It is undisputed that the $50.00 deposit, as well as the $6,300.00 party assessment, computed at 32% of the annual salary of the office, is a tax. *Campbell v. Davenport*, 5 Cir., 362 F. 2d 624.

The discretion of the State Legislature as to taxation is restrained only by the will of the people as expressed in the State Constitution. *Lane County v. Oregon*, 74 U. S. 71.

And to any extent not prohibited by the Constitution of the United States. *Hagar v. Reclamation District*, 111 U. S. 701.

The doctrine of legislative absolutism is foreign to free government as it exists in this country. *Taylor v. Beckham*, 178 U. S. 548, 609.

As Mr. Justice Brennan said, in *N.A.A.C.P. v. Button*, *supra*, 371 U. S. 415, "The decisions of this court have consistently held that only a compelling state interest within the State's constitutional power to regulate can justify limiting First Amendment freedoms."

The State of Texas and the Democratic Party contend in this lawsuit that the challenged filing fees are valid under both the State and Federal constitutions for both revenue and regulation purposes.

The right to seek office, as well as the right to vote, is a fundamental constitutional right. *Jenness v. Little*, *supra*, 306 F. Supp. 925, appeal dismissed, 90 S. Ct. 820; *Thomas v. Mims*, *supra*, 317 F. Supp. 179, 39 L. W. 2165; and *Stapleton v. Clerk*, *supra*, 311 F. Supp. 1187.

A state may not impose a charge for the enjoyment of a right granted by the federal constitution. *Murdock v. Pennsylvania*, 319 U. S. 105, 113. See also: *Grosjean v. American Press Co.*, 297 U. S. 233; *Lovell*

v. City of Griffin, supra, 303 U. S. 444; *Frost & Frost Trucking Co. v. Railroad Commission* of California; 271 U. S. 583; *Harman v. Forssenius,* 380 U. S. 528, 540; *Harper v. Virginia State Board of Elections, supra,* 383 U. S. 663; *United States v. Texas, supra,* 252 F. Supp. 234, 384 U. S. 155.

The unreasonable exclusion of a candidate for public office, when other candidates are given places on the ballot, denies the voters who might wish to vote for the excluded candidate the equal protection of the laws. *Williams v. Rhodes, supra,* 393 U. S. 23.

The burden on the State treasury does not justify an enactment with an invalid purpose. *Edwards v. California,* 314 U. S. 160; *Griffin v. Illinois,* 351 U. S. 12; *Shapiro v. Thompson, supra,* 394 U. S. 618; and *Vaughn v. Bower,* 313 F. Supp. 37, affirmed 39 L. W. 3199. Especially where the statute is more effective in producing constitutional problems than revenue, *Tate v. Short,* 39 L. W. 4301, and alternatives are available, *Tate v. Short, supra,* 39 L. W. 4301; *United States v. Texas, supra,* 252 F. Supp. 234, 384 U. S. 155; *Boddie v. Connecticut,* 39 L. W. 4294.

In 1916, the Texas Supreme Court, construing the State Constitution, in the case of *Waples, et al. v. Marrast,* 108 Tex. 5, 184 S. W. 180, ruled that: "The payment of the expenses of primary elections of political parties is not a public purpose for which public revenues may be used."

It has been stipulated that although candidate Wischkaemper meets all the qualifications for the office of County Judge set forth in the Constitution

of Texas, Article V, Section 15 (*Appendix*, page 116), the Appellant County Chairman of the Democratic Party attempted, nevertheless, to require the payment of the statutory $50.00 deposit and $6,300 party assessment as a precondition to access to the ballot (*Appendix*, page 117) which the candidate was financially unable to pay. (*Appendix*, pages 117-118)

But in the case of *Burroughs & Knight v. Lyles*, 142 Tex. 704, 181 S. W. 2d 570; the Texas Supreme Court held: "The State Constitution . . ., having prescribed the qualifications, . . . it is beyond the legislative power to change or add to those qualifications unless such right is expressly granted by the Constitution itself." To the same effect, see: *Stensoff v. State*, 80 Tex. 428, 15 S. W. 1100; *Dickson v. Strickland*, 265 S. W. 1012; *State v. Court of Civil Appeals*, 123 Tex. 549, 75 S. W. 2d 253. Also see *Graham Purcell v. Jim Lindsey*, 158 Tex. 541, 314 S. W. 2d 283.

It is true that the Texas Legislature has attempted to authorize in statutory language the use of the filing fees for revenue purposes, although such attempt was void under the *Waples* case; but the Legislature never intended to authorize the filing fees for any other purpose. And the Appellants are challenged to designate the exact words in the *Texas Election Code* expressing any legislative intent to use the filing fees to limit access to the ballot to "serious candidates."

"A law is the best expositor of itself," said Mr. Justice Marshall in *Pennington v. Coxe*, 2 Cranch (6 U. S.) 34, 52.

Or, as Mr. Justice Holmes expressed it: "We do not ask what the legislature meant; we ask only what the statute means." *The Theory of Legal Interpretation*, 12 *Harvard Law Review*, 419.

Justice Cardozo said much the same thing in *United States v. Great Northern Railway*, 287 U. S. 144, 154: "We have not travelled in our search for the meaning of the law makers beyond the borders of the statute."

The rule of strict construction applies especially to tax statutes. "There is no latitude in a taxing statute," said Mr. Justice Sutherland, in *Irwin v. Gavit*, 286 U. S. 161, 169, "you must adhere to the very words."

The Supreme Court has recently expressed the same rule in a different way, in *Kramer v. Union School District, supra*, 395 U. S. 621, 23 L. Ed. 2d 583, 592. "(T)he classifications must be tailored so that the exclusion . . . is necessary to achieve the articulated state goal."

The only articulated State goal expressed in the *Texas Election Code* for the deposit and party assessment is that of raising revenue. But the Texas Supreme Court ruled in *Waples* that the use of tax revenues to finance a party primary election is invalid under the State Constitution; and the Three-Judge Court has ruled that a filing fee violates the Federal Constitution "when it is used as a revenue collecting device." Thus, the Supreme Court of the United States cannot approve the State articulated

goal of "revenue collecting" without overturning the solemn judgment of both lower courts.

Although the unarticulated major goal of the filing fee in a one-party State may very well be to limit the number of candidates eligible to challenge the "Establishment," the Democratic Party cannot usurp the authority to impose voting restrictions which the State Legislature is powerless to legislate, for it has been held that "(i)f a law has no other purpose than to chill the assertion of constitutional rights by penalizing those who choose to exercise them, then it (is) patently unconstitutional." *Shapiro v. Thompson*, 394 U. S. 618, 631; *United States v. Jackson*, 390 U. S. 570, 581.

IV.

The Filing Fee Makes Affluence An Electoral Standard

A. The $50 Poll Tax

The poll tax of $1.75 heretofore required by the State of Texas as a precondition to the right of a citizen to vote for *others* as candidates for public office was declared unconstitutional by the federal courts in 1966. *United States v. Texas, supra*, 252 F. Supp. 234, 384 U. S. 155.

The poll tax of $50 still required by the State of Texas as a precondition to the right of a citizen to vote for *himself* as a candidate for certain offices ("deposit to accompany application for place on ballot," Article 13.07a, *Texas Election Code*) is here being challenged, as violative of the First Amendment

and Fourteenth Amendment rights of all candidates, and additionally of the Twenty-Fourth Amendment rights of candidates for Congress.

Mr. Justice William O. Douglas, in his recent book, *Points of Rebellion*, Random House, Inc., N. Y., at page 72, states that the Texas poor constitute 28.8 per cent of the population of the State.

Although the payment of a $50 tax may not seem unduly burdensome to a person of ordinary means, the amount is prohibitive to an indigent person with no savings and very little income.

"When Congress has made reasonable findings of fact and embodied them in reasonably related legislation," the court said, in *Century Arms, Inc. v. Kennedy*, 323 F. Supp. 1002, "its decisions are to be given special deference." Congress has made reasonable findings with reference to the poll tax which are entitled to "special deference."

Section 10a of the Voting Rights Act of 1965, 79 Stat. 437, 1965, reads as follows: "The Congress finds that the requirement of the payment of a poll tax as a precondition to voting (i) precludes persons of limited means from voting or imposes unreasonable financial hardship upon such persons as a precondition to their exercise of the franchise, (ii) does not bear a reasonable relationship to any legitimate State interest in the conduct of elections, and (iii) in some areas has the purpose or effect of denying persons the right to vote because of race or color."

If the requirement of a poll tax of less than $2 pre-

cludes persons of limited means from voting, then more than one-fourth of the population of Texas are precluded from running for public office by a $50 poll tax on political candidates.

In *Breedlove v. Suttles*, 302 U. S. 277, 281, the court said with reference to the poll tax, "collection from all would be impossible for always there are many too poor to pay."

In *Harper v. Virginia Board of Elections, supra*, 383 U. S. 663, the court held that Virginia's poll tax, which was used to support "free public schools," worked an invidious discrimination because exercise of the right to vote was conditioned upon economic status, and payment of the tax had no relation to voter qualification.

In *United States v. Texas, supra*, 252 F. Supp. 234, 254, the court said, "It is clear . . . that the Legislature and the people may not choose to deny a fundamental constitutional right as a means of collecting revenue. * * * If the State of Texas placed a tax on the right to speak at the rate of one dollar and seventy-five cents per year, no court would hesitate to strike it down as a blatant infringement of the freedom of speech. Yet the poll tax as enforced in Texas is a tax on the equally important right to vote."

The State of Texas has placed a $50 poll tax, not only on the right to vote for oneself, but on the equally important right of a citizen to speak as a political candidate, and this court should not hesitate to "strike it down, as a blatant infringement of the freedom of speech."

But, more importantly, the $50 candidate tax works an invidious discrimination, because the fundamental constitutional right to seek public office is conditioned upon economic status. And a State may no more fence out indigents who seek elective office than it may try to fence out indigents generally.

The Appellants contend that the tying of the $50 tax to the right to run for office is necessary to raise revenue to finance the primary election, and every candidate should pay the party assessment or forfeit his place on the ballot.

Mr. Justice Brennan, in delivering the opinion of the court in a public welfare case, *Shapiro v. Thompson, supra,* 394 U. S. 618, 632-633, answered this argument rather completely:

> "Appellants' reasoning would logically permit the state to bar . . . [indigents] from schools, parks, and libraries or deprive them of police and fire protection. Indeed it would permit the State to apportion all benefits and services according to the past tax contributions of its citizens. The Equal Protection Clause prohibits such an apportionment of state services. We recognize that a state has a valid interest in preserving the fiscal integrity of its programs. It may legitimately attempt to limit its expenditures, whether for public assistance, public education, or any other purpose. But a state may not accomplish such a purpose by invidious distinctions."

In *Boddie v. Connecticut, supra,* 39 L. W. 4294 the Court more recently considered the same problem and struck down a filing fee of $45 for an indigent divorce

applicant. "Other alternatives exist to fees and cost requirements," the court said. "(T)he state's asserted interest in its fee and cost recoupment . . . was offered and rejected in *Griffin v. Illinois*, *supra*, 351 U. S. 12 (1956)."

B. The $6,300 Party Assessment

The Supreme Court of Illinois, in the case of *People v. Board*, 44 N. E. 321, held that a statute requiring filing fees of $25, $50, $75 and $100 was an illegal and arbitrary discrimination in favor of one able and willing to make cash contributions against one unable or unwilling to do so, and the attempt of the legislature to require candidates "to buy their way into office" was an unwarranted hindrance and impediment to the rights of the candidates and voters alike.

In the case at bar, the State of Texas, acting through The Democratic Party of Tarrant County, attempted to require local candidates in the 1970 primary election "to buy their way into office" by a set of filing fees eighty-nine times as high as those outlawed in 1906 by the State of Illinois. See Table I, page 42, and Table II, page 43, for a schedule of these enormous fees.

"The reach of the Equal Protection Clause is not definable with mathematical precision." Mr. Justice Douglas said recently in *Boddie v. Connecticut*, *supra*, 39 L. W. 4294, 4298, "But rather definite guidelines have been developed: *race* is one . . .; *religion* is another . . .; *poverty* is still another . . .; and *class* or *caste* yet another . . . Here the invidious discrimina-

tion is based on one of the guidelines: poverty." Poverty is a suspect legislative classification. *Meltzer v. LeCraw & Co.*, 39 L.W. 3483, 3484.

Congress has found that the requirement of the payment of a poll tax precludes persons of limited means from voting, and the Texas poll tax of $1.75 has been struck down as a tax on the "important right to vote."

The right to seek . . . an elective office is an analogue or corollary to the right to vote. *Jenness v. Little, supra*, 306 F. Supp. 925, 927, appeal dismissed 90 S. Ct. 820. *Spillers v. Slaughter*, 325 F. Supp. 550, 552.

Logic would impel the conclusion that a poll tax on the important right to seek an elective office would suffer the same constitutional infirmity as a poll tax on the important right to vote, and to the same extent. In other words, a poll tax of $1.75 is unconstitutional, whether applied to citizens who want to vote for others or to citizens who want to vote for themselves, especially in connection with federal offices.

But in the case at bar we are not dealing with a simple tax of $1.75. We are dealing with two separate tax levies, (1) the $50 deposit and (2) the $6,300 party assessment, computed at 32% of the annual salary of the office, which divides itself into two parts: (a) the revenue tax in the amount of $2,726.01, or 43.27% of the assessment, used to finance the election; and (b) the regulatory fee, or monopoly surcharge, in the amount of $3,573.99, or 56.73% of

the assessment, used to restrict the ballot to "serious candidates," and returnable after the election is over.

The question of whether or not a $50 poll tax can restrict the number of persons who seek elective office in not an academic one.

In the Reubin Jenkins *Plea in Intervention (Appendix*, p. 46), a passing reference is made to the office of County Weigher. A fee of $50 was assessed for candidates for this position (*Appendix*, p. 135,), although there is no statutory provision for a filing fee for the office (Exhibit "A," p. 36). No candidate for County Weigher paid a filing fee (*Table* I, p. 42), although obviously at least one candidate had announced, or the question of an assessment would never have been considered. The only inferences deducible from these facts are that the $50 fee ran off all candidates for the office, or these candidates were admitted to the ballot without a fee, along wtih Candidate Wischkaemper, as an indirect result of the preliminary order of the Three-Judge Court on April 3, 1970 (*Appendix*, p. 105).

Table IV, at page 45, shows the median income for all persons over the age of 14 in the Fort Worth Metropolitan Area to be $2,921, but for whites $3,221, as contrasted with $1,421 for blacks, and $1,844 for members of other races. In other words, it is, for all practical purposes, impossible for the person of median income to pay the filing fees required of candidates for public office in Fort Worth, Texas, and roughly twice as difficult for blacks and *chicanos* to pay these fees as for whites.

The same table shows the median income for white males to be $4,572, as compared with $1,410 for white females; and black males $2,295 as compared with $874 for black females, comparable figures not being available for other races in this category. In other words, the median income for white males is more than three times the median income for white females, and the median income for black males almost three times the median income for black females. It is therefore, roughly three times as difficult for females to pay a filing fee as for males in the Fort Worth area.

Assuming, for purposes of our discussion, that only a person with an annual income of $10,000 or more could save up enough money to pay the filing fees to run for county judge of Tarrant County, only 12,124 out of 190,841 males (12,079 white, 28 black and 17 other males) could qualify, as compared with 574 out of a total of 206,130 females (570 white, 4 black and 0 other races). See Table IV, p. 45.

Or assuming that only those with an annual income in excess of $5,000 could pay the filing fees, only 71,294 out of 190,841 males (70,263 white, 984 black, and 50 other races) could qualify, as compared with 6,381 out of 206,130 females (6,179 white, 202 black, and none of other races).

There are more women than men in the Fort Worth area, but men outnumber women 11 to 1 in the $5,000-plus group and 21 to 1 in the $10,000-plus group.

One person out of ten in the area is Negro, but whites outnumber blacks 65 to 1 in the $5,000-plus

income group and 395 to 1 in the $10,000-plus group. Table IV.

Assuming that only those with an income in excess of $5,000 could raise the filing fees for office, 11 times as many men as women could qualify, and 65 times as many whites as blacks.

Or assuming that only those with an income in excess of $10,000 could raise the filing fees, 21 times as many men as women could qualify, and 395 times as many whites as blacks.

Thus, it would appear that the statutory requirement of the payment of a deposit and party assessment, although apparently fair and impartial on its face, amounts to an indirect designation of race on the ballot, forbidden by *Anderson v. Martin*, 375 U. S. 399, and racial gerrymandering forbidden by *Baker v. City of St. Petersburg*, 5 Cir., 440 F. 2d 294, since more whites can pay the fees than blacks or members of other races.

Also, the male vote is weighted more than the female vote, the white vote more than the black vote, because the personal property qualification falls unequally according to income; and the income groups with candidates on the ballot are more likely to vote than those without candidates on the ballot.

The Supreme Court has considered the problem of vote weighting in the case of *Gray v. Sanders*, 372 U. S. 368: "In view of the provision in the Fifteenth Amendment prohibiting a state from denying or abridging a Negro's right to vote, and the provision

in the Nineteenth Amendment doing the same for women, it would be impermissible discrimination if a state . . . weighted the male vote more heavily than the female vote or the white vote more heavily than the Negro vote."

Between 1927 and 1953, the State of Texas was before the Supreme Court of the United States five different times over racist primaries financed by party assessments. *Nixon v. Herndon*, 273 U. S. 536; *Nixon v. Condon*, 286 U. S. 73; *Grovey v. Townsend*, 295 U. S. 45; *Smith v. Allwright*, 321 U. S. 649; and *Terry v. Adams*, 345 U. S. 461.

Several heavy-handed attempts to exclude blacks from the party primaries have been declared invalid by the Supreme Court; and now the State of Texas relies upon an entangling web of filing fees to accomplish the same invidious purpose in an indirect way, by making wealth an electoral standard.

Thus, we now have before the Supreme Court a subtle and sophisticated white primary election, weighted to "fence out" from the political processes not only, blacks and *chicanos*, but poor whites as well, from such poverty enclaves as the college campus, the low-income housing project, the rest home, the ghetto, and the military installation.

"Freedom of speech and press and freedom of association for the purpose of advancing ideas and airing grievances," the Supreme Court said, in *Gibson v. Florida Investigation Committee*, *supra*, 372 U. S. 539, "are constitutionally protected not only against heavy-handed frontal attack, but also from

being stifled by more subtle governmental interference."

Discrimination against voters and candidates on the basis of wealth has consistently been found unconstitutional by the Supreme Court.

Within the last two years, the Supreme Court has ruled that non-property owners cannot be constitutionally excluded from voting in school board elections (*Kramer v. Union Free School District, supra*, 395 U. S. 621, 23 L. Ed. 2d 583) revenue bond elections (*Cipriano v. City of Houma*, 395 U. S. 701, 23 L. Ed. 2d 647) and general obligation bond elections (*City of Phoenix v. Kolodziejski*, ___ U. S. ___, 26 L. Ed. 2d 523).

But more importantly, only last year, in *Turner v. Fouche*, ___ U. S. ___, 24 L. Ed. 2d 567, the Supreme Court invalidated a Georgia statute restricting membership on county boards of education to freeholders, i.e., owners of a "single square inch of land," holding that ". . . the plaintiffs and members of their class have a federal constitutional right to be considered for public service without the burden of invidiously discriminatory disqualifications . . . A state may not deny to some the privileges of holding public office that it extends to others on the basis of distinctions that violate federal constitutional guaranties."

"(A) man's mere property status, without more, cannot be used by a state to test, qualify, or limit his rights as a citizen of the United States . . . The mere state of being without funds is a neutral fact—con-

stitutionally an irrelevance, like race, creed, or color." *Edwards v. California, supra*, 314 U. S. 160, 184-185.

In *Harper v. Virginia State Board of Elections, supra*, 383 U. S. 663, the Supreme Court held that a State violates the Equal Protection Clause ". . . whenever it makes the affluence of the voters or payment of any fee an electoral standard. Voter qualifications have no relation to wealth nor to paying this or any other tax . . ." The Court summed up the case by saying: "Wealth, like race, creed, or color, is not germane to one's ability to participate intelligently in the electoral process."

CONCLUSION

"The plaintiffs and members of their class have a federal constitutional right to be considered for public service without the burden of invidiously discriminatory disqualifications."

If the State of Texas could not, under the First Amendment, require a license fee as a precondition to the right of a citizen to speak, publish a newspaper, distribute handbills, hold a public meeting, or practice religion, then it certainly should not be allowed to require a license fee as a precondition to the right of a citizen to seek elective office which is also a fundamental right protected by the First Amendment.

"A State may not deny to some the privileges of holding public office that it extends to others on the basis of distinctions that violate federal constitutional guaranties."

If the State of Georgia could not require the ownership of real property (i.e., one square inch of land) as a qualification for elective office, the State of Texas should not be allowed to require the ownership of personal property (i.e. $6,350 in cash) as a qualification for elective office, especially since the State of Texas confiscates the personal property through filing fee taxation, while the State of Georgia allowed the citizen to retain title to his one square inch of land.

"A man's mere property status, without more, cannot be used to test, qualify, or limit his rights as a citizen of the United States."

If the State of Texas could not require a license fee of $1.75 as a precondition to the right of a citizen to

vote for another as a candidate for elective office, it should not be allowed to require the payment of a license fee of $1.75 as a precondition to the right of a citizen to vote for himself as a candidate for elective office.

"A State violates the Equal Protection Clause whenever it makes affluence or the payment of any fee an electoral standard."

Respectfully submitted

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CERTIFICATE OF SERVICE

I, A. L. Crouch, attorney for Appellees Theodore H. Wischkaemper and Reubin Jenkins and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 24 day of August, 1971, I served a copy of the foregoing Appellees' Brief on the Appellants by depositing a copy in the United States mail, postage prepaid, and addressed to the attorneys of record for Appellants, as follows:

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EXHIBIT "A"

THE TEXAS FILING FEE STATUTES

The Texas Election Code goes into minute and cumbersome detail creating arbitrary and unreasonable classifications of filing fee taxes. There is a different set of filing fees for municipal elections, special elections and primary elections.

1. Municipal elections are covered by Art. 13.53, which authorizes independent candidates to qualify for a place on the ballot by filing a petition signed by 25 qualified voters, but other candidates must qualify by "paying such filing fees as may be required by statute or by charter provisions."

2. Special elections are covered by Art. 4.10, which sets filing fees as follows: "$1,000 for a Statewide office, including without limitation the offices of United States Senator and United States Congressman at Large, a fee of $500 for the District office of United States Representative, a fee of $150 for the district office of State Senator or State Representative, and a fee of $10 for a city office. Such fees shall be deposited in the general fund of the State or City, as the case may be."

3. Primary Elections are covered by several different Articles, which provide for four sub-classifications of primary filing fees, as follows: (1) Percentage fees are required of candidates for two offices: Congressman at Large, 5% of the annual salary, or $2,125; and Justices of the Courts of Civil Appeals, 5% of the annual salary, or $1,300. Art. 13.15. (2) Fixed fees are required of candidates for several of-

fices: State Board of Education, $50, Art. 13.08-4; United States Senator and all other statewide offices, except Congressman at Large, $1,000. Art. 13.15. (3) Legislative fees, required of candidates for State Senator and State Representative, fall into four categories: (a) Candidates in special elections, pay $150, Art. 4.10; (b) except as otherwise provided in the Election Code, the fee for State Representative is $150, Art. 13.16-2; (c) some candidates pay a fee which is determined by the number of counties in the district: when there are no more and no less than two counties in the district, the fee is $100 per county, Art. 13.16-7; and when there are 8 and not more than 9 counties in the district, the fee is $25 per county, Art. 13.08a-5; and (d) some candidates pay a fee which is determined according to the population of the various counties in the district, an invidious discrimination against residents of the populous counties in favor of residents of the rural counties, *Moore v. Ogilvie*, 394 U. S. 814 (1969), such fees being compiled in the following table:

Population of County	*Senator*	*Representative*	*Article*
5,000 or less	$1**	$1**	13.16.1-1
5,000 to 10,000	$5**	$5**	13.16.1-2
10,000 to 40,000	$10**	$10**	13.16.1-3
40,000 to 125,000	$50**	$50**	13.16.1-4
125,000 to 200,000	$75**	$75**	13.16.1-5
over 200,000	$100**	$100**	13.16.1-6
350,000 to 640,000	$300	$300	13.08a-1
650,000 to 900,000	$1,000*	$600	13.08a
900,000 to 1,000,000	$300	$300	13.08a
over 1,000,000	$1,000	$500†	13.08a

**Per county

*If part of county is joined to 2 or more other counties, candidates for State Senator of the district shall pay $250.

†or less

(4) Assessed fees in addition to a $50 deposit, Art. 13.07a, are paid by all other candidates for district, county and precinct offices, such fees being determined by the county executive committee of the political party, giving due consideration to the importance, emolument and term of office for which nomination is to be made, Art. 13.08-I, with no statutory ceiling provided for such fees, except in counties having a population in excess of one million (there are only two), where the maximum fee allowed is 10% of the annual salary for 2-year offices (there is only one, that of U. S. Representative) and 15% of the annual salary for 4-year offices, Art. 13.08a.

The classifications, sub-classifications, and sub-sub-classifications of filing fees outlined above are wholly wanting in reason, and can have no rational explanation other than political expediency and legislative favoritism. The legislature has no constitutional authority to require county executive committees to take into consideration the importance, emolument and term of office in assessing local filing fees when it refuses to apply the same standards to the fees it sets for its own members and for favored friends in district and statewide offices.

EXHIBIT "B"

ANALYSIS OF CERTAIN FILING FEE SCHEDULES

The primary filing fees which have been assessed by the different county executive committees are a hodge-podge of discriminatory and unequal taxes which are arbitrary, excessive and oppressive on their face. Five tables have been prepared and attached hereto for purposes of illustration.

Table I shows the fees paid by local candidates in the 1970 Tarrant County Democratic primaries, such fees, for 41 offices, falling into 15 different "classifications" and ranging in amount from $50 to $8,900.

It is interesting to note that of the 60 candidates involved, 37 incumbents paid filing fees of $161,000, or 77.3% of the total of $208,200, while 23 challengers paid filing fees of only $47,200, or 22.7% of the total, and 2 candidates forfeited $50 deposits by failing to ante up the assessed filing fees, possibly in a state of shock at the size of them. Since the incumbents pay their filing fees out of salaries received from the public treasury, it would appear that, indirectly at least, 77.3% of the costs of the 1970 Tarrant County Democratic primaries have been paid out of general tax revenues by Republicans and Independents as well as Democrats. Another significant fact which appears from an examination of this table is that of the 25 incumbents with filing fees in excess of $300, only 2 had opposition, while of the 12 incumbents with filing fees less than $300, 4 had opposition; or, to state the same thing in another way,

of the 23 "outs" on the ballot, 16 were seeking offices where the filing fee was less than $300, and only 7 were seeking offices where the filing fee was in excess of $300 (3 of them running for an open spot where there was no incumbent seeking reelection). Can there be any clearer proof that high filing fees discourage candidacy for public office?

Table II shows the Democratic Party filing fee assessments, rebates and net fees in Tarrant County for 10 recent elections, 1948 through 1970, inclusive with the exception of the years 1950 and 1956, which are not on file in the County Clerk's office. Assessments for the 1936 Democratic primary election in Tarrant County, as reported in *Kaufman, et al. v. Parker*, 99 S. W. 2d 1074, ranged from $5 for constable to $650 for district attorney, with refunds being from $1 to $130, and the net fees from $4 to $520. Limiting our study to 8 selected county offices, the 1948 assessments ranged from $740 to $1,640, the refunds from $208.36 to $461.77, and the net fees from $531.64 to $1,178.23, while the 1970 assessments (for the same offices) ranged from $5,325 to $8,900, the refunds from $3,020.87 to $5,048.97, and the net fees from $2,304.13 to $3,851.03! Perhaps more significant than the increase in the size of the filing fees in Tarrant County for this period, however, is the increase in the size of rebates, from 28% in 1948 to 56.73% in 1970, with 5 elections out of the last 6 having rebates of more than 50%! Deliberate premeditated overassessment of this magnitude is invidious, purposeful discrimination, *per se*.

Table III shows the filing fees paid by candidates for 8 local offices in 10 different counties in the 1970 Texas Democratic primaries. The assessments have been made at a percentage of the annual salary, ranging from 7% in Denton County to 32% in Tarrant County, while the rebates range from 15% in Denton County to 61% in McLennan County, with three counties out of the 10 having rebates in excess of 50%. Perhaps the most significant feature of this table is the relationship between the figures for the three most populous counties: while Tarrant County, for these 8 offices, has consistently made the largest assessments and given the largest rebates, yet it just as consistently has the smallest *net fees* of all 3 counties. The Texas Constitution, Art. VIII, Sec. 1, provides that: "Taxation shall be equal and uniform . . ." If there is either equality or uniformity in any of these filing fees, it would probably be due to accident rather than design.

Table IV shows the 1970 filing fees for County Judge in 50 Texas counties.

And Table V, although not a schedule of filing fees, relates ability to pay to the filing fees in the Fort Worth area, for it shows the income of persons 14 years of age and over, by race and sex, for the State of Texas, and the Fort Worth metropolitan area.

TABLE I

FILING FEES PAID BY CANDIDATES IN 1970 TARRANT COUNTY DEMOCRATIC PRIMARIES*

Office	77.3% Incumbent	22.7% Opponents No.	22.7% Opponents Amount	100% Total
Judge, 141st District Court	$ 8,900		-0-	$ 8,900
Judge, Criminal District Court No. 1	8,900		-0-	8,900
Judge, Criminal District Court No. 3	8,900		-0-	8,900
Judge, Criminal District Court No. 4	8,900		-0-	8,900
Judge, Domestic Relations Court No. 1	8,900		-0-	8,900
Judge, Domestic Relations Court No. 2	8,900		-0-	8,900
Judge, Domestic Relations Court No. 4	8,900		-0-	8,900
District Attorney	7,300		-0-	7,300
U. S. Representative, District No. 12	6,800		-0-	6,800
Judge, County Probate Court	6,650		-0-	6,650
Judge, County Court at Law	6,650		-0-	6,650
Judge, County Criminal Court No. 1	6,650		-0-	6,650
Judge, County Criminal Court No. 2	6,650		-0-	6,650
Judge, County Criminal Court No. 3	6,650		-0-	6,650
Judge, County Court	6,300	(1)	$ 6,300	12,600
District Clerk	6,300		-0-	6,300
County Clerk	6,300		-0-	6,300
County Commissioner, Precinct No. 2	-0-	(3)	18,300	18,300
County Commissioner, Precinct No. 4	6,100	(3)	18,300	24,400
County Treasurer	5,325		-0-	5,325
Justice of the Peace, Precinct No. 1	4,700		-0-	4,700
Justice of the Peace, Precinct No. 2	4,700		-0-	4,700
Judge, 67th District Court (½ term)	4,450		-0-	4,450
Justice of the Peace, Precinct No. 3	2,900		-0-	2,900
U. S. Representative, District No. 6*	1,000*		-0-	1,000*
Justice of the Peace, Precinct No. 8	600		-0-	600
Justice of the Peace, Precinct No. 6	300		-0-	300
State Senator, District No. 10	300	(2)	600	900
State Senator, District No. 22*	300*	(1)	300*	600*
State Representative, Place 1	-0-	(4)	1,200	1,200
State Representative, No. 2	-0-	(2)	600	600
State Representative, Place 3	300		-0-	300
State Representative, Place 4	300	(1)	300	600
State Representative, Place 5	300		-0-	300
State Representative, Place 6	-0-	(4)	1,200	1,200
State Representative, Place 7	300		-0-	300
State Representative, Place 8	300		-0-	300
Justice of the Peace, Precinct No. 5	125		-0-	125
Justice of the Peace, Precinct No. 4	50	(2)	100	150
Justice of the Peace, Precinct No. 7	50		-0-	50
County Surveyor	50		-0-	50
Total	(37) $161,000	(23)	$ 47,200	(60) $208,200
2 candidates forfeited $50 deposit			100	100
			$ 47,300	$208,300

2 candidates for County Weigher did not pay assessed fee of $50. See Appendix, p. 135

*More than one county in the District.

*Compiled from Exhibit "C," Stipulation of August 21, 1970.

TABLE II

TARRANT COUNTY DEMOCRATIC PRIMARY FILING FEES FOR 8 LOCAL OFFICES, 1948-1970, WITH 1950 AND 1956 NOT AVAILABLE*

		1948	1952	1954	1958	1960	1962	1964	1966	1968	1970
District Judge	Assessment	1,640.00	3,354.00	3,500.00	5,408.00	6,200.00	6,120.00	6,480.00	6,160.00	6,720.00	8,900.00
	Refund	461.77	915.65	709.79	2,627.82	3,178.67	3,160.00	3,285.97	3,850.00	2,282.00	5,048.97
	Net Fee	1,178.23	2,438.35	2,790.21	2,780.18	3,021.33	2,960.00	3,194.03	2,310.00	4,438.00	3,851.03
District Attorney	Assessment	740.00	1,241.50	1,900.00	3,840.00	—	4,896.00	—	5,040.00	—	7,300.00
	Refund	208.36	338.93	385.32	1,862.75	—	2,530.43	—	3,150.00	—	4,141.29
	Net Fee	531.64	902.57	1,514.62	1,977.25	—	2,365.57	—	1,890.00	—	3,158.71
District Clerk	Assessment	740.00	1,241.50	1,900.00	3,840.00	—	4,080.00	—	4,200.00	—	6,300.00
	Refund	208.36	338.93	385.32	1,862.75	—	2,116.69	—	2,625.00	—	3,573.99
	Net Fee	531.64	902.57	1,514.62	1,977.25	—	1,863.31	—	1,575.00	—	2,726.01
County Judge	Assessment	740.00	1,358.00	2,000.00	4,448.00	—	4,862.00	—	4,804.80	—	6,300.00
	Refund	208.36	370.34	405.60	2,162.12	—	2,510.19	—	3,003.00	—	3,573.99
	Net Fee	531.64	987.66	1,594.40	2,285.88	—	2,351.81	—	1,801.80	—	2,726.01
County Court at Law	Assessment	600.00	1,157.00	1,800.00	3,840.00	—	4,080.00	—	4,480.00	—	6,650.00
	Refund	168.94	315.86	365.04	1,862.75	—	2,116.69	—	2,800.00	—	3,772.55
	Net Fee	431.06	841.14	1,434.96	1,977.25	—	1,863.31	—	1,680.00	—	2,877.45
County Commissioner	Assessment	550.00	1,115.00	1,750.00	3,840.00	4,560.00	4,080.00	4,320.00	4,032.00	4,032.00	6,100.00
	Refund	154.86	304.40	354.90	1,862.75	2,339.51	2,116.69	2,190.65	2,520.00	1,369.25	3,460.53
	Net Fee	395.14	810.60	1,395.10	1,977.25	2,220.49	1,963.31	2,129.35	1,512.00	2,662.75	2,639.47
County Treasurer	Assessment	370.00	760.50	900.00	3,360.00	—	3,570.00	—	3,360.00	—	5,325.00
	Refund	104.18	207.62	182.51	1,634.07	—	1,846.86	—	2,100.00	—	3,020.87
	Net Fee	265.82	552.88	717.49	1,725.93	—	1,723.14	—	1,260.00	—	2,304.13
County Clerk	Assessment	740.00	1,241.50	1,900.00	3,840.00	—	4,080.00	0	4,200.00	—	6,300.00
	Refund	208.36	338.93	385.32	1,862.75	—	2,116.69	—	2,625.00	—	3,573.99
	Net Fee	531.64	902.57	1,514.68	1,977.25	—	1,863.31	—	1,575.00	—	2,726.01
Rebate % of assessment		28.157%	27.3%	20.28%	48.6%	51.3%	51%	54%	62.5%	33.96%	56.73%

*Compiled from information reported in Exhibit "C" attached to Stipulation of Fact of August 21, 1970.

TABLE III

FILING FEES PAID BY CANDIDATES FOR 8 LOCAL OFFICES IN 10 COUNTIES IN 1970 TEXAS DEMOCRATIC PRIMARIES*

		Tarrant	Bexar	Dallas	Jefferson	McLennan	Galveston	Lubbock	Wichita	El Paso	Denton
District Judge	Assessment	8,900.00	7,840.00	6,720.00	4,500.00	3,405.00	3,380.00	2,700.00	2,954.00	1,490.00	1,400.00
	Refund	5,048.97	1,991.46	2,240.00	1,890.00	2,077.05	1,443.26	1,000.00	1,624.70	417.03	210.00
	Net Fee	3,851.03	5,848.54	4,480.00	2,610.00	1,327.95	1,936.74	1,700.00	1,329.30	1,072.97	1,190.00
District Attorney	Assessment	7,300.00	5,740.00	6,000.00	4,500.00	1,872.00	2,600.00	—	—	—	—
	Refund	4,141.29	1,458.04	2,000.00	1,890.00	1,141.92	1,110.20	0	—	—	—
	Net Fee	3,158.71	4,281.96	4,000.00	2,610.00	730.08	1,489.80	—	—	—	—
District Clerk	Assessment	6,300.00	4,200.00	4,800.00	2,400.00	2,064.60	1,950.00	1,386.00	1,584.00	1,480.00	777.00
	Refund	3,573.99	1,066.86	1,600.00	1,008.00	1,257.41	848.25	500.00	871.20	424.23	116.55
	Net Fee	2,726.01	3,133.14	3,200.00	1,392.00	807.19	1,101.75	886.00	712.80	1,055.77	660.45
County Judge	Assessment	6,300.00	6,300.00	6,480.00	3,233.33	2,160.00	2,340.00	1,386.00	—	1,780.00	777.00
	Refund	3,573.99	1,600.28	2,160.00	1,359.00	1,317.60	999.18	500.00	—	496.20	116.55
	Net Fee	2,726.01	4,699.72	4,320.00	1,874.33	842.40	1,340.82	886.00	0	1,283.80	660.45
County Court at Law	Assessment	6,650.00	5,180.00	5,520.00	3,300.00	2,064.60	2,340.00	1,386.00	2,114.40	1,480.00	777.00
	Refund	3,772.55	1,315.79	1,840.00	1,386.00	1,257.41	999.18	500.00	1,162.92	424.23	116.55
	Net Fee	2,877.45	3,864.21	3,680.00	1,914.00	807.19	1,340.82	886.00	951.48	1,055.77	660.45
County Commissioner	Assessment	6,160.00	4,200.00	5,520.00	2,400.00	1,789.20	1,560.00	1,212.75	1,320.00	960.00	777.00
	Refund	3,460.53	1,066.86	1,840.00	1,008.00	1,091.41	666.12	400.00	726.00	263.69	116.55
	Net Fee	2,639.47	3,133.14	3,680.00	1,392.00	697.79	893.88	812.75	594.00	696.31	660.45
County Treasurer	Assessment	5,325.00	3,920.00	4,680.00	2,400.00	1,230.30	1,560.00	1,386.00	1,267.20	960.00	546.00
	Refund	3,020.87	995.73	1,560.00	1,008.00	750.48	666.12	500.00	696.96	268.69	81.90
	Net Fee	2,304.13	2,924.27	3,120.00	1,392.00	479.82	893.88	886.00	570.24	691.31	464.10
County Clerk	Assessment	6,300.00	4,200.00	4,800.00	2,450.00	2,064.60	1,950.00	1,386.00	1,584.00	1,480.00	777.00
	Refund	3,573.99	1,066.86	1,600.00	1,008.00	1,257.41	832.65	500.00	871.20	424.23	116.55
	Net Fee	2,726.01	3,133.14	3,200.00	1,442.00	807.19	1,117.35	886.00	712.80	1,055.77	660.45
Assesment % of annual salary		32%	28%	24%	17%	11%-15%	15%	21%	8%-12%	17%	7%
Rebate % of assessment		56.73%	25.4%	33.33%	42%	61%	42.7%	36%	55%	28%	15%

*Compiled from information reported in Exhibits "A", "B", and "C", attached to Stipulation of Fact of August 21, 1970

TABLE IV
INCOME OF PERSONS 14 YEARS OF AGE AND OVER, BY RACE AND SEX, FOR THE STATE OF TEXAS AND THE FORT WORTH METROPOLITAN AREA*

AREA, RACE, AND SEX	TOTAL (INCLUDES PERSONS WITHOUT INCOME)	PERSONS WITH INCOME										
		TOTAL	$1 TO $999 OR LOSS	$1,000 TO $1,999	$2,000 TO $2,999	$3,000 TO $3,999	$4,000 TO $4,999	$5,000 TO $5,999	$6,000 TO $6,999	$7,000 TO $9,999	$10,000 AND OVER	MEDIAN INCOME (DOL.)
THE STATE												
TOTAL	6 562 992	4 604 370	1 380 717	717 347	566 677	498 275	414 222	332 137	231 375	279 080	184 540	2 360
WHITE	5 783 676	4 031 592	1 116 269	593 945	483 686	447 391	384 778	319 205	226 940	275 908	183 470	2 632
NEGRO	767 045	565 001	262 174	121 690	81 794	50 116	28 857	12 551	4 182	2 756	881	1 167
OTHER RACES	12 271	7 777	2 274	1 712	7 197	768	587	381	253	416	189	1 943
MALE	3 210 190	2 887 391	537 148	392 487	363 345	340 545	314 149	288 329	212 802	263 876	174 710	3 443
WHITE	2 838 910	2 567 319	436 390	328 322	294 690	296 638	289 765	277 330	209 182	261 215	173 787	3 756
NEGRO	365 259	314 786	99 622	63 085	67 707	43 297	23 937	10 663	3 411	2 317	747	1 916
OTHER RACES	6 021	5 286	1 136	1 080	948	610	447	336	209	344	176	2 450
FEMALE	3 352 802	1 716 979	843 569	324 860	203 332	157 730	100 073	43 808	18 573	15 204	9 830	1 046
WHITE	2 944 766	1 464 273	679 879	265 623	188 996	150 753	95 013	41 875	17 758	14 693	9 683	1 197
NEGRO	401 786	250 215	162 552	58 605	14 087	6 819	4 920	1 888	771	439	134	770
OTHER RACES	6 250	2 491	1 138	632	249	158	140	45	44	72	13	1 170
FORT WORTH												
TOTAL	396 971	287 737	72 934	39 973	33 626	32 799	30 730	26 246	16 977	21 754	12 698	2 921
WHITE	357 880	256 921	60 791	32 308	28 766	29 813	28 801	25 492	16 718	21 583	12 649	3 221
NEGRO	39 097	30 511	12 069	7 572	4 826	2 965	1 896	732	256	163	32	1 421
OTHER RACES	494	305	74	93	34	21	33	22	3	8	17	1 844
MALE	190 841	175 347	23 045	17 492	18 806	21 463	23 247	22 763	15 680	20 727	12 124	4 295
WHITE	172 275	159 017	19 182	14 386	14 816	18 757	21 613	22 147	15 453	20 584	12 079	4 572
NEGRO	18 309	16 130	3 841	3 054	3 960	2 689	1 605	594	224	135	28	2 295
OTHER RACES	257	200	22	52	30	17	29	22	3	8	17	2 867
FEMALE	206 130	112 390	49 889	22 481	14 820	11 336	7 483	3 483	1 297	1 027	374	1 281
WHITE	185 105	97 904	41 609	17 922	13 950	11 056	7 188	3 345	1 265	999	570	1 410
NEGRO	20 788	14 281	8 228	4 518	866	276	291	138	32	28	4	874
OTHER RACES	237	105	52	41	4	4	4	—	—	—	—	—

*From Table 133, Volume I, U. S. Census of Population: 1960, Characteristics of the Population, Part 45, Texas. U. S. Government Printing Office, Washington, D. C. — Figures not yet available for the 1970 census.

TABLE V

1970 FILING FEES FOR COUNTY JUDGE IN 50 TEXAS COUNTIES

	Annual Salary	%	Assessment	%	Refund	%	Net Fee
BAYLOR	$ 6,819.12	3	$ 204.00	53½	$ 109.14	1.39	$ 94.86
BEE	9,700.00	9¼	898.00	36	319.28	5.97	578.72
BEXAR	22,500.00	28	6,300.00	25½	1,600.28	20.89	4,699.72
BRAZOS	12,000.00	10	1,200.00	34.32	411.84	6.57	788.16
BROWN	8,000.00	7	560.00	53	298.21	3.27	261.79
CAMERON	9,195.00	11	1,011.45	10	101.45	9.9	910.30
CARSON	7,944.00	6	467.64	42	200.00	3.48	276.64
CHAMBERS	9,734.75	10	973.47	55	535.40	4.5	438.07
DALLAS	27,000.00	24	6,480.00	33	2,160.00	16	4,320.00
DENTON	12,000.00	6.5	777.00	15	116.55	5.5	660.45
GAINES	10,700.00	7	749.50	20	149.90	5.6	599.60
GALVESTON	18,000.00	13	2,340.00	42.7	999.18	7.45	1,340.82
GARZA	7,110.00	6.4	450.00	15	67.50	5.38	382.50
GOLLIAD	8,014.00	5	400.70	61	244.26	2	156.44
GRAYSON	12,230.76	17	2,082.32	70	1,457.62	5.11	624.70
HALE	10,312.20	5	514.00	13	66.82	5.34	447.18
HIDALGO	16,200.00	13	2,106.00	21	450.00	4	656.00
HILL	6,000.00	10	600.00	31	222.00	6.3	378.00
HOCKLEY	8,910.00	4.9	438.19	37	135.84	3.4	302.35
HOOD	7,200.00	8⅓	600.00	55	330.00	3.75	270.00
HUDSPETH	6,000.00	5	300.00	50	150.00	2½	150.00
JASPER	8,910.00	10	891.00	50	445.00	5	445.00
JEFFERSON	19,400.00	23⅓	3,233.33	42	1,359.00	9.66	1,874.33
JIM HOGG	6,750.00	12	810.00	25	202.00	9.01	608.00
KENT	7,452.00	1.78	125.00	2.5	31.60	11.25	98.40
LUBBOCK	12,600.00	11	1,386.00	36	500.00	7.03	886.00
LYNN	6,300.00	6	378.00	66	249.48	2.04	128.52
McLENNAN	14,400.00	15	2,160.00	61	1,317.60	5.85	842.40
MOTLEY	6,146.00	1⅔	100.00	20	20.00	1.3	80.00
NAVARRO	9,708.00	12	1,164.96	44	512.58	6.72	652.38
PARKER	9,684.60	10	970.00	45	436.50	5.51	533.50
RED RIVER	6,600.00	13	850.00	47	400.00	6.82	450.00
REEVES	8,100.00	8	648.00	40	259.20	4.8	388.80
ROCKWALL	6,600.00	7.6	500.00	-0-	None	7.58	500.00
SABINE	4,461.60	5.6	250.00	-0-	None	5.6	250.00
SCURRY	9,094.92	6.5	591.15	40	236.45	3.9	354.69
SHERMAN	5,896.80	2½	147.42	43	63.37	1.43	84.65
SMITH	20,700.00	12	2,484.00	24.98	618.06	9.01	1,866.00
SOMERVELL	3,820.00	5¼	200.00	47½	95.00	2.75	105.00
STARR	9,300.00	8½	790.50	48	377.65	4.44	412.85
STERLING	6,898.98	2½	172.48	40	68.99	1.5	103.49
TARRANT	19,700.00	32	6,300.00	56.73	3,573.99	13.84	2,726.01
TAYLOR	12,000.00	10	1,200.00	40	480.00	6	720.00
TRAVIS	17,800.00	18	3,204.00	43.75	1,401.64	10.13	1,802.36
VAL VERDE	10,549.00	7	738.43	20	147.68	5.6	590.75
VICTORIA	12,000.00	8	960.00	45	432.00	4.4	528.00
WHEELER	6,300.00	4	252.00	18	44.10	3.3	207.90
WICHITA	17,620.00	12	2,114.00	55	1,162.92	5.4	951.08
WINKLER	10,694.25	4	427.75	54	231.47	1.84	196.28
WISE	8,004.00	7½	600.00	50	300.00	3.75	300.00